

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1901.

No. 1103.

97

THE MIDDLE STATES LOAN, BUILDING AND CONSTRUCTION COMPANY OF HAGERSTOWN, MARYLAND, APPELLANT,

vs.

IRA J. BAKER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JUNE 3, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM. 1901.

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In the Court of Appeals of the District of Columbia.

THE MIDDLE STATES LOAN, BUILDING & CONSTRUCTION
Co. of Hagerstown, Md., Appellant,
vs.
IRA J. BAKER. } No. 1103.

a Supreme Court of the District of Columbia.

IRA J. BAKER, Complainant,
vs.
THE MIDDLE STATES LOAN, BUILDING AND
Construction Company of Hagerstown,
Maryland, Defendant. } No. 21190. In Equity.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss :*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Original Bill, &c.*

Filed February 20, 1900.

In the Supreme Court of the District of Columbia.

IRA J. BAKER, Complainant,
vs.
THE MIDDLE STATES LOAN, BUILDING AND
Construction Company of Hagerstown,
Maryland, Defendant. } Equity. No. 21190,
Docket 48.

To the honorable justices of the said court, sitting in equity :

Your complainant, Ira J. Baker, respectfully shows to the court :

1. That he is a citizen of the United States and a resident of the District of Columbia, and brings this suit in his own right.

2. That the defendant is a body corporate, chartered, created, and organized under the laws of the State of Maryland, but having an office in and carrying on business in the city of Washington, in the District of Columbia, and is sued in its own right.

3. That the defendant is engaged, among other things, in loaning money upon real-estate security; that complainant is ad-

vised and believes that heretofore, on, to wit, the twenty-second day of September, A. D. 1893, a certain Elizabeth A. Irey, then residing in the District of Columbia, borrowed from the defendant the sum of fourteen hundred dollars (\$1,400.00), and to secure the payment of the same executed her bond or obligation to the said defendant, together with a mortgage to secure the performance of the conditions of said bond or obligation, executed by the said Elizabeth A. Irey and her husband, Charles W. Irey, in favor of the defendant as mortgagee, upon the real estate known and designated as lot numbered five (5), in block numbered twenty-one (21), in Langdon Park, D. C., according to the plat recorded in Book County 7, at page 116, in the office of the surveyor of the District of Columbia, which said mortgage bears date the 22nd day of September, A. D. 1893, and was duly recorded among the land records of said District on the thirtieth day of September, A. D., 1893, in Liber No. 1863, at folio 31 *et seq.*; that the said Elizabeth A. Irey and her said husband by their deed dated November 30th, A. D. 1896, conveyed said parcel of real estate to one Anna May Wood, and the said Anna May Wood and her husband, Court F. Wood, by their deed dated April 14th, A. D. 1898, conveyed the same to one Wilmina Flickinger, and said Wilmina Flickinger and her husband, John A. Flickinger, by their deed dated August 31st, A. D. 1898, and duly recorded among the land records of said District on November 28th, A. D. 1898, in Liber 2364, at folio 219 *et seq.*, conveyed the same to your complainant, who thereby became and still is the owner of the same in fee-simple; that at the time of the said transfer to your complainant the indebtedness secured by said mortgage was in part unsatisfied, and the said mortgage was not and has not as yet been in any manner released of record. A true copy of said mortgage as so recorded is hereto annexed and marked "Complainant's Exhibit No. 1" and is prayed to be read and considered as a part hereof.

3 4. Complainant is further advised and believes that heretofore, on, to wit, the twenty-third day of November, A. D. 1893, a certain Wiley R. Cook, then residing in the District of Columbia, borrowed from the defendant the sum of one thousand dollars (\$1,000.00), and to secure the payment of the same executed his bond or obligation to said defendant, together with a mortgage to secure the performance of the conditions of said bond or obligation, executed by the said Wiley R. Cook and his wife, Katie Cook, in favor of the defendant as mortgagee, upon those parcels of real estate in the District aforesaid known and designated as the rear fifty (50) feet square of lot nine (9) and the rear fifty (50) feet square of lot ten (10), except a small corner cut off by Miss Cowperthwait, as shown by the map, square twenty-two (22), Langdon Park, District of Columbia, according to Ira J. Baker and others' plat, recorded in Book County 7, page 116, surveyor's office of the said District, which said mortgage bears date the twenty-eighth day of November, A. D. 1893, and was duly recorded among the land records of said District on the twenty-eighth day of December, A. D. 1893,

in Liber 1886, at folio 4 *et seq.*; and complainant further avers that the said Wiley R. Cook and his said wife. by their deed dated May 2nd, A. D. 1895, and duly recorded among the land records of of said District on May 14th, A. D. 1895, in Liber 2021, at folio 164 *et seq.*, conveyed said parcels of real estate to your complainant, who thereby became and still is the owner of the same in fee-simple; that at the time of the said transfer to your complainant the indebtedness secured by said mortgage was in part unsatisfied and

4 said mortgage had not and has not as yet been in any manner released of record. A true copy of said mortgage as so recorded is hereto annexed and marked "Complainant's Exhibit No. 2," and is prayed to be read and considered as a part hereof.

4½. That, as will more fully appear by reference to said copies of said mortgages hereto annexed, the said mortgagors undertook to repay the said amounts so borrowed in certain monthly installments, and complainant is informed and believes, and therefore avers, that they did each make sundry payments, both of principal and interest, on account of the sums so borrowed by them respectively, as aforesaid, and that the several subsequent owners of the property embraced and described in the said mortgage from the said Elizabeth A. Irey by virtue of the several conveyances aforesaid, likewise made sundry payments on both the principal and the interest of the said indebtedness so contracted by her during the periods of their respective ownership of said property; and complainant further avers that since the said transfers to him of the said property covered by both of said mortgages he has likewise made sundry payments, both of principal and interest, to the defendant on account of the debts secured by said mortgages.

5. That the payments upon said loan for fourteen hundred dollars (\$1,400.00), which complainant has made to defendant and which he is informed and believes and which defendant admits were made to it by the said previous owners of the property upon which the same was secured, aggregate the sum of eighteen hundred and eighty-four dollars and forty cents (\$1,884.40), which has
5 been paid in one payment of \$28.00 and seventy-six monthly instalments of \$23.80 each, and \$47.60 collected as fines; that the payments made by the complainant and by the said Wiley R. Cook to the defendant on account of the said loan for one thousand dollars (\$1,000.00) aggregate the sum of \$1,350 and have been paid in one payment of \$20.00, two monthly payments of \$12.00 each, and seventy-six monthly payments of \$17.00 each, and \$14.00 collected as fines, and said payments so made on account of the aforesaid loans, when applied according to the true, lawful intent of the aforesaid mortgages or according to any lawful, fair, and equitable method of applying partial payments, are more than sufficient to liquidate said loans, with interest at six per cent. per annum, which is the rate fixed in said mortgages.

6. That on or about the 16th day of December, A. D. 1899, your complainant, being aware that the payments made as aforesaid were

sufficient to liquidate the said debts, applied to the defendant for releases of the said mortgages, whereupon he was advised by the defendant that it would require as a condition to releasing the Cook mortgage aforesaid payment of the sum of four hundred and eighty dollars and seventeen cents (\$480.17), and as a condition for releasing the Irey mortgage aforesaid the sum of seven hundred and forty-two dollars and ninety-two cents (\$742.92), which information was communicated to your complainant by the defendant through its secretary, one Aaron K. McGraw, on, to wit, the 18th day of December, A. D. 1899.

7. That the defendant makes its loans upon what purports to be the plan of building association loans, and the aforesaid loans were so made; that upon the transfer of the aforesaid parcels of
6 real estate to complainant he is advised and believes that the defendant assigned and transferred to him on its books certain shares of its stock theretofore subscribed for and taken out by the said Wiley R. Cook, and certain other shares of its stock theretofore subscribed for and taken out by the said Elizabeth A. Irey, but complainant made no request for said transfers to be made; he has, however, continued to pay the monthly instalments on account of said loans, exacted and demanded by the defendant, until the 18th day of December, A. D. 1899, as aforesaid; that the said mortgages each provide, among other things, as will appear from reference to the copies of the same hereto attached, that said loans are made with reference to the laws of the State of Maryland, where the same are payable, but in the ascertainment of the amounts alleged to be due on account of said loans the said defendant has adopted a method of accounting which has been declared illegal by the highest court of said State, and has attempted to apply certain portions of said payments to usurious interest under the pretended designation of premiums, without the consent of complainant and in a manner which is in violation of the laws of the District of Columbia, and particularly in violation of the laws of the said State of Maryland, as interpreted by the highest court thereof, in litigation to which this very defendant was a party, and repugnant to good conscience and in violation of equity; that by the laws of said State, to which this defendant has stipulated that said contracts of loan shall be referred, no more than six per cent. per annum is allowed to be charged for money loaned.

8. That upon receipt of the information aforesaid as to the
7 amounts which defendant would require as a condition precedent to the release of said mortgages your complainant, through his attorneys, again communicated with the defendant, tendering himself ready to pay any amount which might be due defendant upon said loans upon a fair accounting, according to the legal intent of said mortgages, proposing the ascertainment of the same according to the method declared legal by the courts of the State of Maryland, and again demanded releases of said mortgages; but, nevertheless, said defendant reiterated its aforesaid demand and still refuses to execute such releases until complainant pays the

amounts so unlawfully demanded, as aforesaid. Complainant now tenders himself ready to pay any amounts which may be found due defendant upon a fair accounting, but denies that he owes defendant anything, but, on the contrary, avers that both of said loans have been overpaid.

9. Complainant is informed and believes that the only relation sustained to the defendant by the said Elizabeth A. Irey and the said Wiley R. Cook was that of borrowers, and that the issuance of the stock aforesaid was a device on the part of the defendant to procure the payment of large amounts of usurious interest, contrary to law and violative of equity and good conscience; that complainant is entitled to have all the payments aforesaid credited to the said loans and to be released from any further obligation upon the said stock transferred to him by the defendant, as aforesaid; that owing to the complicated nature of the account of payments which is in dispute between the complainant, the defendant, and to the refusal

8 of the defendant to execute releases of the aforesaid mortgaged complainant is without adequate remedy at law with respect to the matters herein complained of.

Premises considered, complainant prays:

1. That process issue against the defendant, The Middle States Loan, Building and Construction Company of Hagerstown, Maryland, requiring it to appear and answer the exigencies of this bill, but answer under oath is expressly waived.

2. That an accounting be had between him and the defendant with respect to the aforesaid loans, and that upon payment by him of such amounts as may be found due from him to the defendant on account thereof the defendant be required to execute releases of the said mortgages, but that if on such accounting it be found that said loans have been overpaid, then that the defendant be required to release said mortgages and to repay to the complainant such overpayments.

3. That the aforesaid shares of stock be cancelled, and that he be decreed to be released from any obligation with respect thereto.

4. That he may have such other and further relief as the equities of the case may require.

The defendant in this suit is The Middle States Loan, Building and Construction Company of Hagerstown, Maryland, a corporation.

I. J. BAKER,
Complainant.

MILLAN AND SMITH,
Sol'rs for Compl't.

DISTRICT OF COLUMBIA, ss:

Ira J. Baker, complainant in the foregoing bill, being duly sworn, upon his oath says: I have read the foregoing bill by me subscribed and know the contents thereof, and the facts therein
9 stated as of personal knowledge are true. Those stated as upon information and belief I believe to be true.

I. J. BAKER.

Subscribed and sworn to before me this 9th day of February, A. D. 1900.

[SEAL.]

S. A. TERRY,
Notary Public, D. C.

COMPLAINANT'S EXHIBIT No. 1.

Filed February 23, 1900.

Elizabeth A. Ireys <i>et vir</i>	}	Recorded September 30, 1893, 12 m. Mortgage.
to		
The Middle States Loan, Building and Construction Company.		

This mortgage made this 22nd day of September A. D. 1893, by Elizabeth A. Ireys and Charles W. Ireys her husband, both of Washington, D. C., witnesseth that for and in consideration of one dollar and the other considerations hereinafter set forth, the said Elizabeth A. Ireys and Charles W. Ireys do grant unto the Middle States Loan, Building and Construction Company of Hagerstown, Maryland, the following real estate situated in the county of Washington and the District of Columbia, to wit, all that certain piece or parcel of land or premises known as lot numbered five (5) in block numbered twenty-one (21), Langdon Park, D. C., according to the plat recorded in Book County 7, page 116, in the office of the surveyor of the District of Columbia. Now, 10
whereas the said Elizabeth A. Ireys is a member of the said The Middle States Loan Building and Construction Company of Hagerstown, Maryland, and has subscribed for 28 shares of the stock of said company, and has obtained a loan of fourteen hundred (1,400) dollars thereon for which she has executed her bond or obligation of even date herewith, payable to said company with interest from date, payable monthly with the following conditions: If the said Elizabeth A. Ireys shall pay the said interest monthly on said sum of fourteen hundred (1,400) dollars received by her as aforesaid and shall make the monthly payments monthly on 28 shares of stock of said company, 14 of such shares being premium shares required to be taken for the loan instead of the usual premium and shall pay any and all fines assessed against her or said shares of stock and shall likewise pay when due the taxes assessed against the property mortgaged to secure the payment of said loan of fourteen hundred (1,400) dollars and premiums necessary to keep the buildings on said mortgaged property insured from loss by fire in such sum as the said company may require (not exceeding \$3,000), until the said stock subscribed for by her as aforesaid becomes fully paid in and of the value of \$100 per share then it is understood that upon the surrender of said stock to said company this obligation shall be deemed fully paid and cancelled but if she fail to pay when due and payable the said taxes and insurance premiums or make default in the payment of said monthly interest, fines and monthly payments on said stock for a

period of six months after the same are, or any installment thereof is, due then at the option of said company the whole indebtedness evidenced by this obligation, including any tax and insurance premiums due or paid by said company shall at once become due and collectable and a foreclosure of said mortgage in the manner therein provided may be had; but if the money due on this bond is paid or collected by the company by suit or foreclosure before the stock subscribed for shall have matured as aforesaid, then such rebate, if any, from payment on the premium shares of stock will be allowed as the board of directors of this company shall in their discretion deem equitable. Now, if the said Elizabeth A. Irey shall comply with the undertakings in said obligation till the same be paid or cancelled as therein provided then this conveyance shall become and be void, but if default be made in all or any one of the covenants or agreements mentioned in said bond which shall make the same due or in the payment of the same or any part thereof after maturity, then the said Middle States Loan Building and Construction Company of Hagerstown, Maryland, *M. D.*, by its attorney authorized by the board of directors shall be authorized to sell at public auction the premises hereby conveyed on such terms as it shall prescribe, giving notice of such sale as prescribed by the laws of the District of Columbia. It is further understood and agreed that the said loan is made with reference to the laws of Maryland where the same is payable and in case of foreclosure the proceeds of sale shall be used and appropriated as follows: First to the payment of costs and expenses attending the execution of this power of sale, including the usual equity commission on the said proceeds to its attorney aforesaid, then to the payment of the balance yet unpaid on said loan, together with any interest and fines thus then unpaid, together with all taxes and insurance premiums paid by said company, and the surplus, if any, shall be paid over to the said Elizabeth A. Irey according to the conditions of said bond as to the premiums shares that are otherwise forfeited to said company.

Witness the following signatures and seals.

ELIZABETH A. IREY. [SEAL.]
CHARLES W. IREY. [SEAL.]

Attest: J. ROSS COLHOUN.

DISTRICT OF COLUMBIA, }
County of Washington, } ss:

I hereby certify that before me, a notary public for county and District aforesaid, personally appeared, this 22nd day of September, A. D. 1893, Elizabeth A. Irey and Charles W. Irey, her husband, of Langdon, D. C., and did both acknowledge the foregoing mortgage to be their act and deed.

[NOTARIAL SEAL.]

J. ROSS COLHOUN,
Notary Public, D. C.

DISTRICT OF COLUMBIA, }
County of Washington, } *To wit:*

I, J. Ross Colhoun, a notary public in and for the District and county aforesaid, hereby certify that Elizabeth A. Ireys and Charles W. Ireys, of Langdon, D. C., the grantors in and who are personally well known to me as the persons who executed the foregoing and annexed mortgage dated September 22nd, 1893, personally appeared before me in the District & county aforesaid and acknowledged said mortgage to be their act and deed, and the said Elizabeth A. Ireys, being by me examined privily and apart from her husband and having the mortgage aforesaid fully explained to her by me, acknowledged the same to be her act and deed and declared that she
13 had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this 22nd day of September, A. D. 1893.

[NOTARIAL SEAL.]

J. ROSS COLHOUN,
Notary Public, D. C.

Answer of Defendant Co.

Filed March 13, 1900.

In the Supreme Court of the District of Columbia.

IRA J. BAKER, Complainant,	}	Equity. No. 21190, Docket —.
<i>vs.</i>		
THE MIDDLE STATES LOAN, BUILDING AND Construction Company of Hagerstown, Maryland, Defendant.		

This defendant, now and at all times hereafter, saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised is material or necessary for it to make answer to, answering, says:

1 & 2. It admits as true the allegations contained in the first and second paragraphs of said bill.

3. In answer to the third paragraph of said bill, this respondent admits that it is engaged in the business of loaning money
14 as a building association, under the laws of Maryland, upon real-estate security, and that on or about the 22nd day of September, A. D. 1893, Elizabeth A. Ireys, a resident of the District of Columbia, borrowed from this defendant the sum of \$1,400 and secured payment of the same in the manner and upon the property as stated in this paragraph, and that said mortgage was duly recorded as therein set forth. Defendant admits that it was advised of certain transfers of the mortgaged premises, subsequent to the making of the loan to the said Elizabeth A. Ireys, but it is not in-

formed as to the date of the transfers and recordation of the same. Defendant further admits that the mortgage was not and has not been in any manner released of record for the reason that the same has not been fully satisfied. The defendant is not informed as to who is the owner of record of the outstanding equitable title to said premises, and can neither admit nor deny this portion of the complainant's bill, but demands strict proof thereon, if the same is deemed material.

4. Defendant admits loaning to Wylie R. Cook on or about the 23d day of November, A. D. 1893, the sum of \$1,000, the payment of which was secured in the manner and on the property set forth in this paragraph of said bill. It further admits that it was informed of subsequent transfers of said mortgaged premises after the making of said loan, but it is not informed as to the dates of transfers nor the recordation thereof. Defendant admits that said mortgage is not in any manner released of record for the reason that the same is not satisfied in whole. Defendant is not informed as to

15 who is the present owner of record of the outstanding equitable title of the property set forth in this paragraph, and can neither admit nor deny the same, but demands strict proof thereof, if the same is deemed material.

4½. In answer to this paragraph of said bill, this defendant admits that its books show certain payments of dues on stock, interest on loans, and fines for non-payment of each were made from time to time, but this defendant is not informed as to who made said payments, but believes that some of said payments were made by each of the parties referred to in this paragraph at various times as owners of the mortgaged premises.

5. In answer to this paragraph of said bill, this defendant admits that there has been paid to it on the loan made by it to Elizabeth A. Irey, as dues on stock, interest, and \$1.40 as fines, the sum of \$1,810.20, but denies that this amount has been paid in one payment of \$28 and 76 monthly payments of \$23.80 each, and \$47.60 collected as fines; but states the fact to be that the sum of \$28 was paid to it by the said Elizabeth A. Irey as admission fee into the company, and that the other payments paid on account of this loan, aggregating the sum total of \$1,810.20, were made up of monthly payments of \$23.80 each, and the sum of \$1.40 as fines; that there has been paid to it on the loan made by it to Wylie R. Cook, as dues on stock, interest, and \$15 as fines, the total sum of \$1,331; but denies that this amount has been paid in one payment of \$20, two monthly payments of \$12 each, and 76 monthly payments of \$17 each and \$14 collected as fines, but alleges the fact to be that the said sum of \$20 was paid by the said Wylie R. Cook as admission fee into this company for the purpose of obtaining said loan,

16 and that the total amount of payments on this loan, aggregating the sum of \$1,331, is made up of the monthly payments, as stated in this paragraph, plus the sum of \$15 paid as fines in accordance with the constitution and by-laws of this company. This defendant, further answering said paragraph, denies

that sufficient money has been paid on account of either or both of said loans, described in this paragraph, to liquidate said loans, with interests and fines, according to the regular plan of the company, its by-laws, rules, and regulations, and in accordance with the terms and conditions of the contracts entered into by this defendant company with the said Elizabeth A. Irey and Wylie R. Cook, as members of said company.

6. In answer to this paragraph of said bill, this defendant admits that its secretary did send statements showing the sum required to repay in full the Irey loan, as of the date of December 22, 1899, was \$742.92, and that the sum required to repay in full the Cook loan, as of the date of December 28, 1899, was \$480.17, and that these sums would have to be paid before this respondent would release said properties from the operation and effect of said mortgages.

7. In answer to this paragraph of said bill, this defendant admits that it is a loan, building, and construction association, incorporated under the laws of the State of Maryland; that it makes its loans and carries on its business according to what it believes is strictly the rules and practice of loan and building associations under the law of the State of Maryland; that certain of its stock, heretofore subscribed for and taken out by said Elizabeth A. Irey and Wylie R. Cook and upon which said loans were made to them, was trans-

ferred to the complainant on the books of the defendant, and
17 that complainant did make certain monthly payments on account of said loan, and the contracts for said loans were made with reference to the laws of the State of Maryland, where the same was payable, but this defendant denies emphatically that in the ascertainment of the amounts due on said loans the method of accounting which was adopted by this defendant has been declared illegal by the highest courts of the State of Maryland, and it further denies that it "has attempted to apply certain portions of said payments to usurious interest under the pretended designation of premiums without the consent of complainant," either in violation of the laws of the State of Maryland or the District of Columbia, or that the method of ascertaining the amounts due on said loans is repugnant to good conscience and in violation of equity.

8. In answer to this paragraph this defendant admits that it has received from the complainant, through his attorneys, an offer to settle said mortgages on a basis proposed by them, but this defendant denies that said basis is in accordance with the contract entered into with the borrowers, Irey & Cook, or that the same is in accordance with the constitution and by-laws of this company, and in accordance with the contract entered into with the said parties.

This defendant further states that the amount due it, as of February 22, 1900, on the Irey loan, is \$766.02, and that the amount due it as of Feb. 28, 1900, on the Cook loan, is the sum of \$483.89; that in the ascertainment of these amounts it has followed the course and method adopted by the building association under the laws of

the State of Maryland, and that the said sums are ascertained
18 in strict compliance with the contract between this defendant and its borrowers, Irey and Cook.

This defendant, further answering said paragraph, emphatically and positively denies that both of said loans have been overpaid.

9. In answer to this paragraph of the said bill, this defendant emphatically denies the same in toto.

And now, having fully answered, this respondent prays to be hence dismissed with its reasonable costs on its behalf expended.

THE MIDDLE STATES LOAN, BUILDING &
CONSTRUCTION COMPANY OF HAGERS-
TOWN, MARYLAND,
By AARON K. McGRAW, *Secretary*.

LEIGH ROBINSON,
BENJ. S. MINOR,
Solicitors for Def't.

COUNTY OF WASHINGTON, }
State of Maryland. }

A. K. McGraw, being first duly sworn according to law, deposes and upon oath says that he is the secretary of the Middle States Loan, Building and Construction Company and as such has authority to sign the foregoing answer; that he has read the foregoing answer by it subscribed and knows the contents thereof; that the matters and things therein stated upon its personal knowledge are true and those facts stated upon information it believes to be true.

AARON K. McGRAW, *Secretary*.

19 Subscribed and sworn to this 12th day of March, 1900.
J. KNODE BAKER,
[SEAL.] *Notary Public.*

Replication.

Filed March 20, 1900.

In the Supreme Court of the District of Columbia.

IRA J. BAKER, Complainant,	}	Equity. No. 21190, Docket 48.
vs.		
THE MIDDLE STATES LOAN, BUILDING AND Construction Company of Hagerstown, Maryland, Defendant.		

The complainant hereby joins issue with the defendant upon its answer herein filed.

MILLAN & SMITH,
Solicitors for Complainant.

20 *Order Referring Cause to Auditor.*

Filed June 27, 1900.

In the Supreme Court of the District of Columbia.

IRA J. BAKER, Complainant, vs. THE MIDDLE STATES LOAN, BUILDING AND Construction Company of Hagerstown, Maryland, Defendant.	}	Equity. No. 21190, Docket 48.
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Upon consideration of the motion of the complainant, by his solicitors, the defendants, by their solicitors, consenting thereto, it is this 27th day of June, A. D. 1900, ordered that this cause be, and it hereby is, referred to the auditor of the court to state an account between the parties with respect to the two mortgages herein involved, after hearing such testimony as may be material to the proper statement of such account, and to report said statement to the court.

A. B. HAGNER, *Justice.*

We consent to the above order.

LEIGH ROBINSON,
 BENJ. S. MINOR,
Solicitors for Defendant.

21 *Report of Auditor.*

Filed November 9, 1900.

In the Supreme Court of the District of Columbia.

IRA J. BAKER vs. THE MIDDLE STATES LOAN, BUILDING AND Construction Company of Hagerstown, Md.	}	No. 21190, Equity Docket 48.
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This cause is referred to me to state an account between the parties with respect to the two mortgages herein involved after hearing such testimony as may be material to the proper statement of such account. After due notice I proceeded under this order of reference and return the said account stated in the schedules herewith.

The defendant is a corporation organized under the laws of the State of Maryland and having its principal office in Hagerstown, in that State. Like building associations generally, its purpose is to loan money to the holders of stock in the association.

About the 22nd of September, 1893, one Elizabeth A. Irey obtained a loan of fourteen hundred dollars from the company, for which she executed her bond of that date, payable to the said company, with interest from date, payable monthly, the said bond reciting the conditions as follows:

“If the said Elizabeth A. Irey shall pay the said interest monthly, on said sum of fourteen hundred (1,400) dollars received by her as aforesaid, and shall make monthly payments monthly on 28 shares of stock of said company, 14 of such shares being premium shares required to be taken for the loan instead of the usual premium
 22 and shall pay any and all fines assessed against her or said shares of stock and shall likewise pay when due the taxes assessed against the property mortgaged to secure the payment of said loan of fourteen hundred (1,400) dollars and premiums necessary to keep the buildings on said mortgaged property insured from loss by fire in such sum as the said company may require (not exceeding \$3,000), until the said stock subscribed for by her as aforesaid becomes fully paid in and of the value of \$100 per share then it is understood that upon the surrender of said stock to said company this obligation shall be deemed fully paid and cancelled but if she fail to pay when due and payable the said taxes and insurance premiums or make default in the payment of said monthly interest, fines and monthly payments on said stock for a period of six months after the same are, or any instalment thereof is, due, then at the option of said company the whole indebtedness evidenced by this obligation, including any tax and insurance premiums due or paid by said company shall at once become due and collectable and a foreclosure of said mortgage in the manner therein provided may be had; but if the money due on this bond is paid or collected by the company by suit or foreclosure before the stock subscribed for shall have matured as aforesaid, then such rebate, if any, from payment on the premium shares of stock will be allowed, as the board of directors of this company shall in their discretion deem equitable.”

The said Elizabeth A. Irey, together with her husband, on the same day executed their mortgage to the defendant, conveying sublot numbered 5, in block 21, Langdon park, in this District. The
 23 said mortgage, after reciting the execution and the conditions of the said bond or obligation, provides that if the said obligor should comply with the undertakings in the said obligation, then the said mortgage should become and be void; but in case of default on her part in any of the covenants or agreements mentioned in said bond, then the defendant should be authorized to sell at public auction the premises described and conveyed in and by the said mortgage. The mortgage contains this further provision:

“It is further understood and agreed that the said loan is made with reference to the laws of Maryland, where the same is payable.”

It appears that the said Elizabeth A. Irey made payments, as required by her said bond and mortgage, until about the 30th of November, 1896, when she and her said husband, by deed of that date, conveyed the said real estate to one Anna May Wood, who in turn made payments in accordance with the said bond and mortgage until April, 1898, when she and her husband conveyed the said property to one Wilmina Flickinger; that the said Wilmina continued

the said payments in accordance with the terms of the said bond and mortgage until the 31st of August, 1898, when she, with her husband, conveyed the said property to the complainant in this cause, and that the said complainant, who is still the owner of the said property, has since the date of the said conveyance made the payments as provided by the said bond and mortgage until the month of January, 1900, inclusive.

In accordance with the terms and rules of the defendant, the said Elizabeth A. Irey had, at the time of subscribing to the said shares of stock and procuring the said loan, paid to the defendant an admission fee of twenty-eight dollars, being one dollar on each of the twenty-eight shares. According to the by-laws of the defendant, a copy of which is filed in this reference, the payment on each share of stock of the said company should be sixty cents per month for each and every month until maturity, payable on the last Saturday of each month; that fifty cents per month per share should be paid into the loan fund and ten cents per month applied to defray the operating expenses, of which any unexpended balance should be credited to the loan fund as profit.

Section 8 of article 6 of the said by-laws provides that loans will be made upon the applicant becoming a member of the company and subscribing for the number of shares which at maturity would equal twice the amount of the loan; that one-half of the shares subscribed for should be taken and considered as a premium bid for the money borrowed instead of a money premium required by other plans, and in the repayment of the loan before the maturity of the stock this said one-half of the shares should be only considered as having been subscribed and accepted as a premium for the loan.

This by-law further required the borrowing member to pay interest on the loan, at six per cent. per annum, in monthly instalments, in advance, and the monthly dues on all of the said stock.

This by-law further provides that on instalment stock on which advances are made as loans on which the number of payments is limited to ninety-six months all payments of dues and premiums shall cease at the end of ninety-six months, and the payment of interest only, at the rate of six per cent. per annum, payable monthly, shall continue until the said stock matures.

The original bill of the complainant avers that in December, 1899, being aware that the payments, made as hereinbefore described, were sufficient to liquidate the said debt, he applied to the defendant for a release of the said mortgage, whereupon the defendant required, as a condition to such release, the further payment of \$742.92.

The issue here is as to the manner in which the account between the parties should be stated, the complainant, as would appear from the bill, seeking to have all payments of dues, interest, and premium, as well as fines, applied as credits on account of the principal loan; in other words, that the account should be stated practically in the ordinary form of debits and credits. On the other hand, counsel for the defendant contend that the complainant, standing in the

place of the original borrower, should be treated in the two separate capacities of borrower and of stockholder, and that the dues paid upon the stock or the money paid as dues and so applied by the defendant should not be allowed as credits on account of the loan. The defendant presents an alternative contention based upon the decision of the Court of Appeals in the case of *Armstrong vs. The United States Building Association*, reported in 15th Appeal Cases of this District, page 1.

It will be observed that the mortgage given by Elizabeth A. Irey provides, as quoted above, that the said loan was made with reference to the laws of Maryland, and counsel for the complainant refer to a case determined by the court of appeals of Maryland in 82d Maryland, 506, in which the complainant here was the appellant there, the appellee being The Hagerstown Mattress & Upholstering Company. In that case the appellee subscribed to one hundred

26 shares of stock to procure a loan of five thousand dollars, and, as in the present case, the mortgage given to secure the loan recited that one-half of these shares were called premium shares, required to be taken and carried as a premium for the loan of the money, and the borrowing stockholder was required to pay the monthly payments on the entire one hundred shares. The borrower filed a bill in equity praying leave to repay the money and redeem the mortgage. The defendant, "The Middle States Company," appealed from the decree in that cause in favor of the borrower, and, upon hearing in the court of appeals, the court, after discussing the peculiar features of the transaction, adjudged that the mortgagor should be charged with the loan of five thousand dollars, with interest thereon down to the filing of his bill of complaint, and be credited with its payment into the loan fund, to wit, fifty cents a month on each of the said shares, with interest on each payment from the time it was made to the institution of the suit.

A later case decided in the same court at the January term of the present year, *Isaac H. White vs. Jay Williams*, assignee of the Baltimore Building and Loan Association, the appellant, on the 11th of March, 1893, executed to the said association a bond in the sum of \$1,500.00 for money borrowed from the corporation on fifteen shares of its stock, the condition of the bond being that the obligor should pay the monthly interest on the said sum of \$1,500.00 at the rate of six per cent. per annum, the monthly dues on the said shares, the *monthly premiums* on said shares, all fines assessed, &c., &c., until the said stock should become fully paid in and of the par value of one hundred dollars per share.

27 A mortgage executed on the same day by the appellant and his wife contained the following recital:

"Whereas, the said mortgagor, Isaac H. White, being a member of the said body corporate, has received an advance or loan to the amount of fifteen hundred dollars on fifteen shares of its stock, held by the said Isaac H. White in his own name, the said sum of fifteen hundred dollars being the par value of said fifteen shares and upon which the mortgagors hereby agree to pay during the continuance of this mortgage a premium of seven dollars and fifty cents on the

last Saturday of each and every month, the interest on the said loan on the last Saturday of each and every month at the rate of six per cent. per annum; and the dues of nine dollars on the last Saturday of each and every month; and also such fines and penalties as may be imposed upon him by the by-laws, in accordance with the stipulations hereinafter mentioned."

The condition of the mortgage is that the mortgagors "shall make the payments and perform the covenants herein on each of their part to be performed until the said stock becomes fully matured and of the value of one hundred dollars (\$100) per share."

The mortgagors having made default in the stipulated payments, the mortgaged property was sold, and, a controversy ensuing as to the distribution, the case was referred to an auditor, who stated an account, which was accepted and ratified by the court.

In this account the appellant was charged with the amount of the original loan, interest for the time intervening between the last payment of dues, interest, and premium and the day of sale, and
28 some small amounts for fines, insurance, &c., and credited with the amount actually paid for dues, with average interest thereon.

The objection of the appellant to this account and decree was the allowance to the appellee of \$7.50 per month as premium in addition to the legal rate of six per cent. per annum.

The Court of Appeals, in its opinion, a copy of which duly certified, is filed here, reversed the decree of the court ratifying the report of the auditor on the distinct ground that the provision of the mortgage requiring a monthly premium in addition to the legal interest was usurious and not an authorized charge.

The loan in the present case being by express agreement made with reference to the laws of Maryland, I am constrained to adopt the judgment of the highest court of that State as the rule for the statement of account in this reference.

It cannot be reasonably argued that the subscription for fourteen shares of stock as premium shares was an immediate payment of a premium or bonus for the loan. The monthly dues on these shares was in fact the premium to be paid until the stock matured. The contract, therefore, was for the payment of a monthly premium of \$8.40 in addition to lawful interest on the loan.

But it is contended that the complainant here cannot have the benefit of usurious interest paid and applied, or that if entitled to the benefit of such payments made by himself he is not entitled to the benefit of such payments made by others.

29 The act of Maryland of 1876, chap. 358, prior to which the debtor who had paid usurious interest could recover the excess over the legal rate in an action at law, provided that usury should not be a cause of action in any case where the bond * * * or other evidence of indebtedness has been redeemed or settled for by the obligor, &c. There has been no settlement of the debt in the present case, and the main issue is how the payments made under the terms of the mortgage should be applied.

It does not appear that the complainant assumed the indebtedness secured by the mortgage except as the lien of the mortgage followed the land into his possession and as he continued the payments as his grantors had done.

In the case of *Border State Perpetual Building Association vs. Hayes*, 61st Maryland, 597, the meaning and effect of the act of 1876 is considered, and it is held that the act does not apply even where the original obligation is paid with money obtained from the creditor on a new note or obligation.

Referring to the claim of counsel for the defendant that the accounting in the present case should follow the rule laid down by the Court of Appeals in the *Armstrong* case, I have to say that the present case is distinguishable from that in that the contract there between the association and the borrower expressly limited the number of monthly payments by the latter, and he, having made a given number of these specified payments, tendered himself ready to anticipate the remainder by an immediate payment. Here the contract contains no limitations, but provides in terms that the monthly payments shall continue until

the stock subscribed for by Mrs. Irey became full-paid
30 and of the value of one hundred dollars per share. It

is true that in the 8th section of article 6 of the by-laws of the defendant there is a provision that on instalment stock on which advances are made as loans, on which the number of payments is limited to ninety-six months, all payments of dues and premiums shall cease at the end of ninety-six months, and the payment of interest only, at the rate of six per cent. per annum, continue thereafter until the stock matures, but these by-laws are not made a part of the contract between the borrower here and the defendant company, and cannot, in my judgment, override the express provision of the contract.

In the schedule herewith I have charged the complainant with the amount of the loan, and as interest at the lawful rate was paid monthly, as interest to February 1, 1900, I charge interest from the date to the filing of the bill. I allow him credit for the monthly payments of fifty cents per share on fourteen shares into the loan fund, and the entire amount paid as dues on the other fourteen shares termed premium shares, being sixty cents per share per month, with interest on all their payments from their respective dates to the bringing of this suit.

The account of the loan to Wiley R. Cook is separately stated in a like manner, and a summary of the result of the two accounts is added.

JAMES G. PAYNE, *Auditor*.

31

SCHEDULE A.

Ira W. Baker, Complainant, in Account with the Middle States Loan, Building and Construction Company of Hagerstown, Maryland.

DR.

To amount of loan to Elizabeth A. Irey, September 22d, 1893.....	1,400.00
To interest from February 1, 1900, to February 20, 1900...	4.67
	<hr/>
	1,404.67

CR.

By monthly payments into the loan fund of 50 cents per share on 14 shares of stock, from October, 1893, to January, 1900, both inclusive.....	532.00
Monthly payments of 60 cents per share as dues on 14 shares of stock during the same period..	638.40
	<hr/>
	1,170.40
Interest on the said payments from their respective dates to February 20, 1900.....	214.57
	<hr/>
	1,384.97
	<hr/>
Balance due to defendant.....	19.70

DR.

To amount of loan to Wiley R. Cook Nov. 23, 1893; on the 2d of November, 1899, interest was paid as interest to April 30, 1900.....	1,000.00
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CR.

By monthly payments into the loan fund of 50 cents per share on 10 shares of stock from November, 1893, to April, 1900, both inclusive.....	390.00
Monthly payments as dues of 60 cents per month on 14 premium shares during the same period.....	468.00
	<hr/>
	858.00
32 Interest on 75 of the said payments from their respective dates to February 20, 1900.....	160.87
Interest paid in advance for February, March, and April, 1900.....	15.00
	<hr/>
	1,033.87
	<hr/>
Balance due the complainant.....	33.87

Balance due to the complainant February 20, 1900.....	33.87
Balance due to the defendant " " "	19.70

Net balance due the complainant.....	14.17
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JAS. G. PAYNE, *Auditor*.33 SATURDAY, *October 27th*, 1900—10 o'clock a. m.

Hearing pursuant to notice.

Present: Messrs. Millan, Smith, Robinson, and Minor.

Mr. Millan states that he desires to offer in evidence the deeds by which Mr. Baker takes title.

Mr. Minor states that they will waive that.

Mr. Millan, for the complainant, offers in evidence copies of mortgages heretofore filed as Exhibits 1 & 2 to the original bill; also pass book of the Middle States Loan, Building and Construction Company, issued in the name of W. R. Cooke, and another of the same issued in the name of Ira J. Baker.

Also copy of the deed from Wilmina Flickinger & John A., her husband, to Ira J. Baker, dated November 28th, 1898, and recorded in Liber 2364, at folio 219; also copy of deed from Wylie R. Cook and wife to Ira J. Baker, dated May 2d, 1895, and recorded in Liber 2021, folio 164 *et seq.*, land records of the District of Columbia; also a copy of the charter and by-laws of the defendant corporation.

Mr. Robinson offers in evidence the prospectus of the association showing the plan of operation.

Counsel then proceed to argue the questions at issue.

34 *Exceptions to Auditor's Report.*

Filed December 5, 1900.

In the Supreme Court of the District of Columbia.

IRA J. BAKER	}	No. 21190. Equity. Docket 48.
vs.		
THE MIDDLE STATES LOAN, BUILDING AND Construction Company of Hagerstown, Maryland.		

Now comes the defendant, The Middle States Loan, Building and Construction Company of Hagerstown, Maryland, by its attorneys, Leigh Robinson and Benjamin S. Minor, and submits the following exceptions to the auditor's report filed in the above-entitled cause:

1. The defendant excepts to the auditor's report in allowing the complainant credit for the payments made on account of the fourteen shares subscribed for and carried as premium shares, with interest on such payments from their respective dates to the bringing of the suit.

2. The defendant excepts to the auditor's report in allowing com-

plainant credit for the full amount of payments made on account of the premium shares, to wit, the sum of sixty cents per share, with interest on the full amount of such payments from their respective dates of the bringing of this suit.

3. The defendant excepts to the auditor's report for the reason that it does not conform to the decision and ruling in the case of *Armstrong vs. The United States Building and Loan Association*, decided by the Court of Appeals of the District of Columbia and reported in 15th D. C. App'l, 1.

4. The defendant excepts to the auditor's report on the ground that it finds *that* the contract of loan made with the Middle States Loan, Building and Construction Company by the mortgagors to be a usurious contract.

5. The defendant excepts to the auditor's report on the ground that the complainant is given credit and, in effect, allowed to recover what is claimed to be usurious interest paid by others than the complainant and never complained of by the parties who paid it.

LEIGH ROBINSON,
BENJAMIN S. MINOR,
Solicitors for Defendant.

Decree Overruling Exceptions, &c.

Filed April 12, 1901.

In the Supreme Court of the District of Columbia.

IRA J. BAKER	}	Equity. No. 21190. Docket 48.
vs.		
THE MIDDLE STATES LOAN, BUILDING AND Construction Company of Hagerstown, Maryland, a Corporation.		

This cause coming on to be heard upon the bill and answer, the report of the auditor and the exceptions thereto, and being argued by counsel and considered by the court, from all of which the court is of the opinion that the said report of the auditor herein
36 filed on the 9th day of November, A. D. 1900, ought to be confirmed, it is this 8th day of April, A. D. 1901, adjudged, ordered, and decreed that the exceptions to the said report be, and they are hereby, overruled and the said report in all things ratified and confirmed.

And the court, being further of the opinion that the complainant is entitled to a release of the mortgages described in the bill of complaint, doth further adjudge, order, and decree that the defendant execute to the complainant and deliver to him within twenty days from the date of this decree releases in proper legal form of the mortgage upon lot five (5), in block twenty-one (21), in Langdon Park, District of Columbia, according to the plat recorded in Book County 7, at page 116, in the office of the surveyor for said District, from

Elizabeth A. Irey and husband to the defendant, dated September 22, 1893, and recorded in the office of the recorder of deeds for said District in Liber 1863, at folio 31 *et seq.*, and the mortgage upon the rear fifty (50) feet square of lot nine (9) and the rear fifty (50) feet square of lot ten (10) except a small corner cut off by Miss Cowperthwait, as shown by the map, square twenty-two, Langdon Park, District of Columbia, according to Ira J. Baker and others' plat, recorded in Book County 7, page 116, surveyor's office of said District, from Wiley R. Cook and wife to the defendant, dated November 28, A. D. 1893, and recorded in the office of the recorder of deeds for the said District in Liber 1886, at folio 4 *et seq.*

It is further adjudged, ordered, and decreed that the defendant is indebted to the complainant in the sum of fourteen and $\frac{17}{100}$ dollars, as shown by the said report of the auditor, and that the complainant recover of the defendant the said sum of fourteen and $\frac{17}{100}$ dollars and all the costs of this cause, for which he may have execution as at law.

From this decree the defendant prays an appeal in open court, which is granted, and the bond thereon fixed at one hundred dollars, or in lieu thereof a cash deposit of fifty dollars.

A. C. BRADLEY, *Justice.*

Memorandum.

April 26, 1901.—\$50 deposited by defendant in lieu of appeal bond.

Stipulation of Counsel.

Filed May 21, 1901.

In the Supreme Court of the District of Columbia.

IRA J. BAKER, Complainant,	}	Equity. No. 21190.
<i>vs.</i>		
THE MIDDLE STATES LOAN, BUILDING AND Construction Company of Hagerstown, Maryland, Defendant.		

It is hereby stipulated and agreed by and between counsel representing the complainant and the defendant that the following shall be considered as part of the proof of the record on appeal in the above-entitled cause, to wit:

38 1. That the mortgage from Wiley R. Cook and wife to the defendant company, dated November 28, 1893, and a copy of which is filed as Exhibit No. 2 with the complainant's original bill, is identical in terms with the mortgage from Charles W. Irey and wife to said complainant company, save and except as to the names of the mortgagors, date, and amount, the amount secured under the Cook mortgage being one thousand dollars.

2. That the monthly interest on the Elizabeth A. Irey loan was \$7.00; monthly dues on 14 shares of stock, \$8.40; the monthly dues

on 14 premium shares of stock, \$8.40, and that the said Elizabeth A. Irey, the mortgagor, paid the admission fee of \$28 and the interest, dues, and premiums for 36 months, amounting to \$856.80; in all, \$884.80; that the said Elizabeth A. Irey conveyed the mortgaged premises, on November 30, 1896, to one Anna May Wood; that the deed of conveyance from Irey to Wood recites that the property is conveyed subject to a debt of \$760 (about) in favor of the Middle States Loan, Building and Construction Company; which said debt is assumed by the said grantee, Wood; that the said grantee, Wood, made 12 monthly payments of interest, dues, and premiums, amounting to \$285.60, and \$4.20 in fines, and conveyed the premises to one Wilmina Flickinger; that the deed from Wood to Flickinger recites that the property is conveyed subject to an indebtedness in favor of the Middle States Loan, Building and Construction Company of \$760 (about), but is silent as to the assumption and the payment of the same. Said Wilmina Flickinger made no payments of interest, dues,

39 and premiums, and by deed dated August 31, 1898, conveyed the mortgaged premises to the complainant for a consideration recited in the deed of \$150 and other valuable considerations, subject to an incumbrance in favor of the defendant, which complainant assumed and agreed to pay, but there is no statement in said deed as to the amount of such incumbrance. The complainant made 28 monthly payments of interest, dues, and premiums, amounting to \$666.40.

3. That the monthly interest on the Wiley R. Cook loan was \$5, the monthly dues on 10 shares of stock \$6, and the monthly dues on 10 premium shares of stock \$6; that the said Wiley R. Cook paid the interest for 16 months and the monthly dues and premiums for 18 months, amounting to \$296, and \$20 admission fee and \$5 fines; in all, \$321; that the said Wiley R. Cook, by deed dated May 2, 1895, conveyed the premises to the complainant; that the consideration recited in said deed for said transfer is \$10, but said deed is silent as to the mortgage.

The complainant made 60 monthly payments of interest and dues on the said Cook loan, amounting to \$1,020, and \$10 in fines; in all, \$1,030.

4. That the charter and by-laws of the defendant company, among other things, provide as follows:

ART. 1, "SEC. 5. The payment on each share shall be sixty cents per month, for each and every month, until maturity, except as hereinafter provided for half-rate stock; commencing one month from the date of the certificate and payable on the last Saturday of each month; fifty cents per month per share shall be paid into the loan fund, and ten cents per month may be applied to defray the operating expenses, of which, any unexpended balance, shall be credited, to the loan fund as profit."

ART. 4, SEC. 3. "The payments on each share of installment stock shall be sixty cents (60) per month for full-rate stock, and thirty cents (30) per month for half-rate stock, for each and every month until maturity, commencing one month from date of the certificate. Payments shall be due each subsequent month

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on the day of the month fixed by the board of directors; provided, however, that the board of directors may require the monthly payments on all or a portion of the stock outstanding to be paid on the same day of the month. Ten cents per month per share on the full-rate stock and five cents per month per share on the half-rate stock shall be devoted to the expense fund or account, and the balance of the monthly payment shall be paid into the loan fund. On all investment stock which is limited to 96 months, all payments shall cease at the end of that time, but the stock shall remain and be credited with its proportion of dividends thereafter, until it matures. Should stock mature before 96 months, the payments cease at the date of that maturity."

ART. 5, SEC. 2. "The expense fund shall consist of all admission, transfer, insurance, abstract, and attorneys' fees, amounts paid for insurance or taxes on property on which loans have been made; fees, costs and disbursements of foreclosure, together with ten and five cents per share, per month, from the monthly payments on stock; and this fund so constituted shall be devoted to the payment of operating expenses and said insurance and taxes, in so far as the same may be necessary."

ART. 6, SEC. 8. "Loans will be made to any one applying therefor, upon the applicant becoming a member of the company and subscribing for the number of shares which at maturity would equal twice the amount of the loan, and giving such lien or security as may be required. One-half of the shares subscribed for shall be taken, and considered as a premium bid for the money borrowed, instead of a money premium, required by other plans, and in the repayment of the loan before the maturity of the stock, this said one-half shares shall be only considered as having been subscribed and accepted as a premium for the loan. The borrowing members will pay to the company the interest on said loan at 6 per cent. per annum in monthly installments in advance, and also the monthly dues on all his said stock, as heretofore set out, until such time as the said monthly dues on his non-premium shares and the earnings and profits declared thereon shall equal the matured value of said shares at which time the said stock shall be cancelled and the obligation of the borrower be released. But the board of directors may also make loans for a premium in money to be agreed upon between the company and the borrower, to be paid at such times and in such installments as may be likewise agreed upon between the company and the borrower. For either plan the admission fee shall be \$1.00 for each share of stock subscribed, and the payment of dues on each share of stock shall be sixty cents (60) per month until maturity. The board of directors may, at its discretion, extend the limit of 84 monthly payments on installment stock to 96 monthly payments. This shall not apply to stock issued previous to such extension, except in cases where special application is made to the board of directors by the borrower and granted by said board. On installment stock on which advances are made as loans, on which the number of pay-

ments is limit- to 96 months, all payments of dues and premiums shall cease at the end of 96 months, and the payment of interest only at the rate of 6 per cent. per annum, payable monthly, shall continue until the said stock matures, at which time all payments cease and the lien is released. The board of directors may, at their discretion, issue shares of stock on which the membership fee shall be fifty cents (50) and the monthly payment shall be thirty cents (30) per share, five cents (5) of which payment shall be placed to the credit of the expense fund, and the remainder to the loan fund. The cost of this stock shall be limited to 144 monthly payments, but in all other respects it shall be subject to the same conditions as the 96 monthly payment installment stock, and shall be termed 'half-rate stock.' Any kind of stock may be sold at a premium, at the option of the board of directors, and such premium shall be credited to the loan fund."

MILLAN & SMITH,
Solicitors for Complainant.
 BENJAMIN S. MINOR,
Solicitor for Defendant.

42 *Directions to Clerk for Preparation of Record.*

Filed May 21, 1901.

In the Supreme Court of the District of Columbia.

IRA J. BAKER, Complainant,	}	Equity. No. 21190.
<i>vs.</i>		
THE MIDDLE STATES LOAN, BUILDING AND Construction Company of Hagerstown, Maryland, Defendant.		

The clerk will please prepare a transcript of record on appeal in the above-entitled cause, consisting of the following papers, to wit:

Original bill of complaint.

Exhibit No. 1 with bill of complaint.

Answer.

Replication.

Order referring cause to auditor.

Auditor's report.

Exception to auditor's report.

Decree overruling exceptions to auditor's report.

Stipulation of counsel as to proof.

BENJAMIN S. MINOR,
Solicitor for Defendant.

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Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss :

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 42, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 21190, equity, wherein Ira J. Baker is complainant and The Middle States Loan, Building and Construction Company of Hagerstown, Maryland, is defendant, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe
 Seal Supreme Court my name and affix the seal of said court, at
 of the District of the city of Washington, this 31 day of May,
 Columbia. A. D. 1901.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1103. The Middle States Loan, Building & Construction Co. of Hagerstown, Md., appellant, vs. Ira J. Baker. Court of Appeals, District of Columbia. Filed Jun- 3, 1901. Robert Willett, clerk.